# In the Supreme Court of the United States

OCTOBER TERM, 1969

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No. 452

DONALD LEE HALE, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the court of appeals (Pet. App. 11-19) is reported at 410 F. 2d 147.

### JURISDICTION

The judgment of the court of appeals was entered on April 15, 1969 (Pet. App. 45) and a petition for rehearing (Pet. App. 24-28) was denied on June 13, 1969 (Pet. App. 46). On July 9, 1969, Mr. Justice Black extended petitioner's time for filing a petition

for a writ of certiorari until August 12, 1969 (Pet. App. 23) and the petition was filed on August 9, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether the government knowingly concealed evidence helpful to the defense.

## STATEMENT

Following a jury trial in the United States District Court for the Northern District of Georgia, petitioner was convicted of knowingly receiving a stolen motor vehicle that had moved in interstate commerce, in violation of 18 U.S.C. 2313 (1 R. 1-3).[1] On May 22, 1968, he was sentenced to three years' imprisonment, the judgment specifying, pursuant to 18 U.S.C. 4208(a)(2), that he was to become eligible for parole at such time as the Board of Parole should direct (1 R. 12-13). The court of appeals affirmed (Pet. App. 11-19, 45).

1. On July 29, 1967, a late-model Chevrolet automobile that had been stolen six months earlier in Chattanooga, Tennessee, was involved in a collision with another car while being driven by petitioner's wife in Rossville, Georgia (1 R. 24-29, 30-31, 33, 39, 51-52, 69). Two children of petitioner were also in the automobile at the time of the accident (1 R. 31,

[1] Another count of the indictment, charging the interstate transportation of the vehicle, in violation of 18 U.S.C. 2312, was dismissed on motion of the government following the close of the government's case (1 R. 1, 63-64).

41). Petitioner, who was called to the scene of the accident by his wife, threatened to beat up the driver of the other automobile for hitting "my car" and hurting "my family" (1 R. 30-31, 34, 39-41). When an examination of the car disclosed that the identification plate which normally is affixed to an automobile's left front doorpost was missing, the Chevrolet was towed to the local police department for further investigation (1 R. 34-36, 51). On the following day, July 30, a Rossville police officer received a telephone call from a man who said he was petitioner inquiring why the police "were still holding his car" (1 R. 42-44).

Two days later, on August 1, 1967, F.B.I. Agent Albert Millard contacted petitioner. After advising petitioner of his rights, the agent sought to question him about the Chevrolet involved in the accident. Petitioner told the agent that the car was not his, that he had never seen it or been in it, that he did not know why his wife had it or where she had gotten it, that he knew absolutely nothing about it, and that he did not want to discuss the matter further (1 R. 50-51).

At the time of the accident the Chevrolet in question bore a Tennessee license plate—JS 7605—which, according to registration records, had been issued to one Charles Ladd (1 R. 35-37, 60).[2] Asked on cross-examination if he had interviewed Ladd, Agent Millard said, "No, I have not, myself" (1 R.

[2] A different tag had been on the car when it was stolen (1 R. 29).

60). In response to a further inquiry, "You did locate him [Ladd] did you not?", the agent answered, "No. Our investigation was unable to locate him at present" (1 R. 63).[3]

2. In its opinion affirming petitioner's conviction, the court of appeals noted that the license plate that had been on the Chevrolet when it was stolen had been replaced as of the time of the accident by one registered to the aforementioned Charles Ladd; that no evidence had been presented identifying Ladd or explaining his registration of the car; and that, according to the government's brief, the F.B.I. had been unable to locate Ladd (Pet. App. 13 n. 5). In a petition for rehearing (Pet. App. 24-28), petitioner's appellate counsel (who had not represented him at the trial) said that during the course of his appellate preparations he had learned that the F.B.I. had found Ladd, in California, approximately two weeks after the accident and that he (counsel) "presumed" that the F.B.I. had questioned him regarding the license tag (Pet. App. 26-27). In a memorandum in support of the petition, the attorney said that "[t]he primary assertion" of the petition was that the government, through the F.B.I., had not only found Ladd but had questioned him regarding the automobile (2 R. 78).

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[3] Neither petitioner nor his wife testified. The only evidence presented by the defense was testimony by a character witness that petitioner had a good reputation and that the witness had never seen petitioner driving an automobile similar to the one involved in the charges (1 R. 70-71).

At the direction of the court of appeals, the clerk of the court, in a letter to government counsel, advised that the court was concerned about assertions made in the memorandum in support of the rehearing petition which appeared to be in conflict with testimony by a government witness and with an assertion in the government's brief, and requested an explanation from counsel.

Pursuant to the clerk's request, the Acting United States Attorney filed a response stating that the United States Attorney's entire file had been reviewed and that nothing contained in it indicated that Charles Ladd had at any time been interviewed by any agent or employee of the government concerning the license tag that had been found on the vehicle. The file did contain a report by Agent Millard dated March 29, 1968 (four days after the trial herein, see 1 R. 24), which had been received in the United States Attorney's office on April 2, indicating that on three indicated dates in February 1968 (six months after the accident) F.B.I. Agent David Cook, of the Bureau's Chattanooga office, had unsuccessfully attempted to locate Ladd at a stated Chattanooga address; that on his third attempt, on February 14, 1968, Agent Cook had located Ladd's mother at that address and had been told by her that she had not heard from her son for about six months. The report further stated that on March 13, 1968, Mrs. Ladd advised Agent Cook that her son, with whom she had talked on the telephone since her prior conversation with the agent, had been in California since April or May of 1967, that he was living at

an address in Bellflower, California, and that he (Ladd) had told her that the license plate in which the F.B.I. was interested had been on a 1948 Ford that he had traded to one Vance Dobbins prior to his departure for California. On the following day, March 14, 1968, Agent Millard's report further stated, Agent Cook had tried to locate Vance Dobbins but had not been able to do so (Pet. App. 31-33).[4]

The government's response noted that the above-summarized report by Agent Millard was not in the United States Attorney's file when the file was furnished petitioner's trial counsel because the report was not received by the United States Attorney until April 2, 1968, after the date of the trial (March 25, 1968).[5] The response further indicated that Agent Millard, the F.B.I. agent in charge of the investigation, had advised that Ladd had not been interviewed concerning the license tag prior to the trial[6] and that efforts to locate and interview him about the

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[4] Dobbins was apparently the proprietor of a Chattanooga garage and wrecker service (Pet. App. 38). Petitioner, following the accident in which his wife was involved, engaged the garage to tow the damaged Chevrolet. The car was first taken, apparently, to the garage's Chattanooga station. An hour or so later, at the request of the Rossville police, it was removed to the Rossville Police Department (1 R. 31, 35, 37).

[5] As indicated above, the report, dated March 29, presumably was not even in existence at the time of the trial.

[6] The printed reproduction of the government's response contained in the appendix to the petition for a writ of certiorari erroneously reads: "[Millard] has advised that Charles Ladd was interviewed * * * prior to Appellant's trial * * *" (Pet. App. 33). The original reads: "* * * was not interviewed * * *" (2 R. 79 [p. 2]).

matter had been discontinued after the trial (Pet. App. 33; 2 R. 79).

Following the filing by petitioner of a reply to the government's response (Pet. App. 35-43), the petition for rehearing was denied, without opinion (Pet. App. 46).

## ARGUMENT

Petitioner's only contention—that the government "suppress[ed] and conceal[ed] evidence" potentially helpful to the defense (Pet. 4)—is without merit. The pertinent circumstances were set forth in detail in the government's response to the court of appeals' inquiries. The court, as indicated by its denial of the petition for rehearing, was satisfied that there had been no purposeful concealment or suppression or other basis for a claim of impropriety or miscarriage of justice. That determination is fully supported and warrants no further review.

So far as the allegation that the F.B.I. had "questioned" Ladd is concerned, the fact is, as Agent Millard advised the Acting United States Attorney and as the Attorney reported to the court, that Ladd was at no time interviewed, before or after the trial, concerning the matter in issue. With respect to the alleged "finding" of Ladd by the F.B.I., all that appears is that Ladd's mother, at her interview with Agent Cook on March 13, 1968 (twelve days prior to Millard's testimony), gave Cook the address in California at which Ladd had said he was living. Whether Agent Millard was aware of this development when he testified, or whether in the interval between

the interview and the trial the Bureau made unsuccessful efforts to reach Ladd at the address he had supplied through his mother, does not appear.[7] There is in any event no indication that the challenged testimony of Agent Millard—that Ladd had not yet been located—was either false or intentionally misleading.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*

WILL WILSON,
*Assistant Attorney General.*

PHILIP R. MONAHAN,
*Attorney.*

SEPTEMBER 1969.

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[7] Since the information which Ladd had asked his mother to report to the F.B.I.—that the license plate the Bureau was inquiring about had been on an old Ford that he had traded to one Dobbins prior to his departure for California—appeared, if true, to exonerate him of any guilt in connection with the theft the Bureau was investigating, it is possible that the Bureau's interest in Ladd substantially diminished after the March 13 interview. It is to be noted in this connection that Agent Cook's apparent first move following the receipt of Ladd's relayed information was to attempt to interview Dobbins (*supra*, p. 6).

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